

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 39/66

BEFORE: The Hon. Mr. Justice Lewis, Ag. President
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston (Acting)

R. vs ALVIN PARKER

Mr. W.K. ChinSee for the Crown

Appellant appeared in person

4th October, 1966.

LEWIS, P. (Ag.),

On the 10th of March, 1966, the applicant was convicted on two charges of attempt at rape and attempt at carnal abuse, in respect of one incident. He applied for leave to appeal against his conviction, and in due course, a transcript of the summing-up ought to have been forwarded to this Court. However, on the 14th of June, that is, some three months later, the Court was informed in writing that the stenographer who had taken down a part of this summing-up had carelessly lost his note book containing the notes of the summing-up by leaving it on a pavement somewhere about. The Court then thought that it might be able to deal with the case if it was able to obtain a transcript of the evidence given at the trial, only to be informed subsequently, that the same stenographer had also lost his notes of the portion of the evidence which he had taken. A part of the transcript of the

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summing-up which was taken by another stenographer had been supplied to the Court. It contains certain directions on the law and it also contains a review of part of the evidence of one witness, so that this Court is not in a position to deal with this application.

The question arises, what course the Court ought to take? A question somewhat similar to this arose in the case of Police Commissioner v. Springer (1962) 4 W.I.R. 286, where an important documentary exhibit upon which a magistrate had relied was lost before an appeal against conviction could be considered by the Full Court of Barbados. The Full Court allowed the appeal on the ground that the appellant was entitled to have the Court consider all the relevant and important evidence which the magistrate had considered in arriving at his decision to convict. An appeal was taken to the Federal Supreme Court which affirmed the decision of the Full Court and referred to a decision from British Guiana in which a similar course had been taken.

This applicant, in the instant case, is entitled to have his application considered by the Court on the basis of the full transcript of the evidence, if the Court requires it, and of the full summing-up by the trial judge. Since this is not available, the Court has no alternative but to allow the appeal and set aside the conviction and quash the sentence.

It has been suggested by learned Counsel who appears for the Crown, that the Court ought in the interests of justice to order a new trial. The applicant has been in prison awaiting the determination of his application for leave to appeal for a period of over six months. The Court has no way of determining whether the evidence against

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him was so convincing that the interests of justice require a new trial, and the Court considers that in this particular case it ought not to order a new trial. A verdict of acquittal will therefore be entered.